

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Media Bureau and Consumer and Governmental)	MB Docket No. 12-107
Affairs Bureau Seek Comment on Second VPAAC)	
Report: Video Description and Access to Emergency)	
Information)	
)	
Media Bureau and Consumer and Governmental)	MB Docket No. 12-108
Affairs Bureau Seek Comment on Second VPAAC)	
Report: User Interfaces, and Video Programming)	
Guides and Menus)	

To: The Commission

**COMMENTS OF THE CONSUMER ELECTRONICS
ASSOCIATION**

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SUMMARY

CEA recognizes and applauds the effort and hard work of the Video Programming Accessibility Advisory Committee (“VPAAC”) members in developing the VPAAC’s second report on video description, access to emergency information, user interfaces, and video programming guides and menus (“*Second Report*”). The *Second Report* generally reflects the balanced approach taken by Congress in the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) and, with the exception of some narrow but significant points discussed below, should be followed in developing the forthcoming Notices of Proposed Rulemaking (“NPRMs”) in these dockets.

A few of the recommendations contained in the *Second Report* do not adequately account for equipment manufacturers’ need for flexibility in order to continue delivering innovative devices that further the accessibility of video programming for all. To ensure that service providers and manufacturers have the necessary flexibility and certainty to continue to innovate in the delivery and display of video programming, the Commission should implement the following changes to the VPAAC recommendations.

Tactile Feedback for Essential Functions. When crafting its upcoming rulemaking regarding user interfaces, the Commission should refrain from referencing “tactile feedback” as an example of a specific solution required for accessibility. Accessibility does not require tactile feedback, as demonstrated by the popularity of touch-screen devices among the blind and visually impaired.

Meaning of Reasonably Comparable. To resolve an open issue in the *Second Report*, the Commission should clarify that the term “reasonably comparable” in Sections 204(a) and 205(b) of the CVAA does not mean “identical” with respect to physical buttons, but rather should be given its usual meaning. This is consistent with the express language of the CVAA, which provides “maximum flexibility” to entities providing navigation devices to comply with the user control provisions of Section 205. The statute further clarifies that access to captioning capability must be “reasonably comparable to a button, key or icon” designated for activating that feature. Similarly, Section 204 affords entities providing digital apparatus flexibility in complying with the user control provisions of that section by employing “alternate means.” The “maximum flexibility” language and “alternate means” provision in Sections 204 and 205 were intended to preserve industry’s freedom to innovate and devise solutions to accessing features on digital apparatus.

Access Board Harmonization. The Commission should strive to preserve industry flexibility as it considers how to best implement the *Second Report*’s recommendation that requirements for closed caption and video description controls be harmonized with the new guidelines now being developed by the Access Board.

Video Description for Video Programming Delivered via Internet Protocol. Although the *Second Report* mentions video description requirements for video programming delivered via Internet protocol, the Commission should not seek to adopt any such requirements in the upcoming proceedings. The Commission lacks the authority to adopt video description requirements for video programming delivered via Internet protocol.

Transition Plan for Video Description Signaling. To best satisfy the goals of the *Second Report* regarding the transmission and reception of video description content, the Commission should defer action while industry develops a consensus end-to-end solution and transition plan. Such an industry-led approach, as articulated in the *Second Report*, would be the most efficient way to satisfy the CVAA’s accessibility goals regarding video description.

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The Consumer Electronics Association (“CEA”)¹ hereby responds to the Public Notices² seeking comment on the Second Report (“*Second Report*”)³ of the Video Programming

¹ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multi-national corporations to specialty niche companies, CEA members cumulatively generate more than \$195 billion in annual factory sales and employ tens of thousands of people.

² *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, DA 12-635 (PN rel. Apr. 24, 2012) (“*User Interfaces PN*”); *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: Video Description and Access to Emergency Information*, DA 12-636 (PN rel. Apr. 24, 2012) (“*Video Description and Emergency Information PN*”).

³ SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010 (2012), available at <http://vpaac.wikispaces.com/> (“*Second Report*”).

Accessibility Advisory Committee (“VPAAC”) on the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).⁴

I. INTRODUCTION

CEA recognizes and applauds the effort and hard work of the VPAAC, its members, and its constituent working groups in developing the *Second Report*, which consists of three components: (i) a report produced by Working Group 2 containing recommendations for the provision of video descriptions of video programming, except for consumer generated media, delivered using Internet protocol (“IP”) or digital broadcast television (the “*Video Description Report*”);⁵ (ii) a report produced by Working Group 3 containing recommendations for the provision of emergency information delivered using IP or digital broadcast television in a manner that is accessible to the blind and visually-impaired (the “*Emergency Information Report*”);⁶ and (iii) a report produced by Working Group 4 containing recommendations for the

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”). *See also* Amendment of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). The VPAAC submitted the *Second Report* to the Commission pursuant to Section 201(e)(2) of the CVAA. *See* CVAA § 201(e)(2). The Commission is reviewing the *Second Report* because it will inform upcoming rulemakings by which the Commission will continue implementing the CVAA. *See User Interfaces PN* at 2; *Video Description and Emergency Information PN* at 2.

⁵ *See* SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: VIDEO DESCRIPTION (2012) (“*Video Description Report*”). The *Video Description Report* is available at: <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

⁶ *See* SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: ACCESS TO EMERGENCY INFORMATION (2012) (“*Emergency Information Report*”). The *Emergency Information Report* is available at: <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Access+to+Emergency+Information+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

provision of accessible user interfaces on video programming devices (the “*User Interface Report*”).⁷

CEA and its member companies are committed to working closely with the Commission and the disabilities community to provide all consumers with products and services that meet their needs. CEA was deeply involved in the CVAA legislative process and continues to engage in regulatory and standards activities relating to accessibility. Specifically, CEA is a member of the VPAAC and worked with the other members of each of the three working groups responsible for developing the three components of the *Second Report*.

In developing the rules implementing the VPAAC recommendations, the Commission should hew closely to the statutory language of the CVAA, which reflects the careful approach taken by Congress to increase the accessibility of video programming to individuals with disabilities while preserving manufacturers’ and service providers’ flexibility to ensure continued innovation. The *Second Report* generally reflects Congress’s balanced approach and should be largely followed in developing the forthcoming Notices of Proposed Rulemaking (“NPRMs”),⁸ with the following narrow exceptions:

- In crafting its upcoming rulemaking regarding user interfaces, the Commission should not reference “tactile feedback” as an example of a specific solution required for accessibility.
- The Commission should clarify that the term “reasonably comparable” in Sections 204(a) and 205(b) of the CVAA does not mean “identical” with respect to physical buttons.

⁷ See SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS (2012) (“*User Interface Report*”). The *User Interface Report* is available at the following web address: <http://vpaac.wikispaces.com/file/view/120409+VPAAC+User+Interfaces+and+Video+Programming+Guides+and+Menus+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

⁸ See CVAA §§ 203(d)(2), 204(b), 205(b)(1).

- The Commission should strive to preserve industry flexibility as it considers how to best implement the *User Interface Report*'s recommendation that requirements for closed caption and video description controls be harmonized with the new guidelines now being developed by the Access Board.
- The Commission should refrain from adopting video description requirements for video programming delivered via IP.
- The Commission should defer any action while industry develops a consensus end-to-end solution and transition plan for transmitting and receiving video description.

CEA welcomes the continued opportunity to serve as a resource for the Commission as it addresses these issues.

II. THE VPAAC PRODUCED A THOUGHTFUL AND WELL-DEVELOPED *SECOND REPORT* THAT PROVIDES A SOLID FOUNDATION FOR THE COMMISSION'S FORTHCOMING RULEMAKINGS

With the few exceptions listed above and discussed in Section III below, CEA supports the findings of the *Second Report* and believes that the Commission should follow the report's guidance in structuring the upcoming rulemakings to implement the CVAA. Pursuant to the CVAA, the VPAAC performed a thorough and comprehensive examination of the topics covered by the *Video Description Report*,⁹ the *Emergency Information Report*,¹⁰ and the *User Interface Report*.¹¹

The VPAAC working groups responsible for each portion of the *Second Report* consist of a cross section of consumer and industry representatives.¹² The strength of the *Second Report*, in

⁹ See *Video Description Report* at 3–4.

¹⁰ See *Emergency Information Report* at 1–2.

¹¹ See *User Interface Report* at 1–3.

¹² See VPAAC Working Groups Membership, http://vpaac.wikispaces.com/file/view/VPAAC%20Working%20Groups%20Wiki%205_26_11.doc (listing the names and affiliations of the members of each of the VPAAC's four working groups). For example, Working Group 2 included representatives from the American Council of the Blind, the American Foundation for the Blind, Audio Description Associates, CEA,

part, stems from the diverse composition of each working group, which helped ensure that the viewpoints of the various stakeholders were raised and considered as the *Second Report* was developed. Taken as a whole, the resulting *Second Report* presents recommendations that reflect the common strengths and wisdom of the diverse viewpoints expressed by VPAAC members. Except as discussed below, the Commission should follow the *Second Report* as it continues to implement the CVAA.

III. IN DEVELOPING THE FORTHCOMING NPRMS, THE COMMISSION SHOULD MAKE A FEW NARROW CHANGES TO THE RECOMMENDATIONS OF THE *SECOND REPORT*

Although all of the VPAAC members, including CEA, share the goal of increasing the accessibility of video programming to the disabilities community, some of the recommendations contained in the *Second Report* do not adequately account for equipment manufacturers' need for flexibility in order to continue delivering innovative devices that benefit all consumers. To ensure that service providers and manufacturers have the necessary flexibility and certainty to continue to innovate in the delivery and display of video programming, the following changes are necessary.

A. The Commission should not reference “tactile feedback” as an example of special support used for accessibility.

The *User Interface Report* provides examples of functional requirements to ensure the accessibility of essential functions.¹³ CEA urges the Commission, when crafting the relevant NPRM, to refrain from discussing tactile feedback as an example of special support needed for

DirecTV, EchoStar Technologies, the National Association of Broadcasters, the National Cable and Telecommunications Association, the World Wide Web Consortium, and the WGBH National Center for Accessible Media, among others. *See id.* at 2.

¹³ *See User Interface Report* at 9–15. The *User Interface Report* uses the term “essential functions” to describe “the set of appropriate built-in apparatus functions” referenced in Section 204(a) of the CVAA. *User Interface Report* at 7.

accessibility.¹⁴ Tactile feedback is not required to make a device accessible to the visually impaired. As the Access Board has recognized, “modern touch screen devices . . . have proved popular with people who are blind, despite not having keys which are tactilely discernible.”¹⁵ Consumers are able to purchase today touch-screen products featuring screen readers and other non-visual feedback that make these devices accessible even though they provide very limited tactile feedback.¹⁶ For these devices, providing additional tactile feedback presents a significant and unnecessary technical challenge.

¹⁴ See *id.* at 9 (“For a blind or vision impaired person, identifying the location of the Control mechanism for each essential function and reliably recognizing that the desired result is realized . . . requires special support including for example tactile and/or acoustic feedback. For a deaf or hard of hearing person, tactile and/or visual feedback is useful in confirming the desired result has been achieved.”).

¹⁵ See *Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards*, Advance Notice of Proposed Rulemaking, Docket No. 2011–07, RIN No. 3014–AA37, 76 Fed. Reg. 76640, 76646 (Dec. 2011) (“ANPRM”) (discussing the popularity of modern touch-screen devices in Question 8).

¹⁶ These accessibility features may be built-in to the consumer device or subsequently downloaded by the user. See, e.g., Samsung, *FAQs – Verizon Wireless Cell Phones: How Do I Enable or Disable Accessibility Mode on My Verizon Wireless Galaxy™ Nexus™ (SCH-i515) Device?*, http://www.samsung.com/us/support/SupportOwnersFAQPopup.do?faq_id=FAQ00045719&fm_seq=48415 (last visited June 4, 2012) (providing instructions for enabling Accessibility mode or TalkBack, a screen reader, as well as other accessibility features for the visually impaired); Google, *About TalkBack*, ANDROID OS, <http://support.google.com/ics/nexus/bin/answer.py?hl=en&answer=2492748> (describing TalkBack, which provides spoken feedback to help a user navigate his or her phone) (last visited June 4, 2012); Senseg, <http://senseg.com/> (last visited June 4, 2012) (describing Senseg’s touch-screen interface solutions, which will enhance touch-screen interfaces for the blind and visually impaired by providing advanced haptic feedback that will allow users to sense the screen); Christopher MacManus, *Tablet app brings new touch to Braille*, CNET (Oct. 12, 2011, 3:09 PM), http://news.cnet.com/8301-17938_105-20118728-1/tablet-app-brings-new-touch-to-braille/ (describing a Braille writer developed by a research group at Stanford, that “could one day radically shift the way the visually impaired use modern tablets”); Stanley Darma, *BrailleTouch: Touchscreen Typing App for the Visually Impaired*, MEDGADGET (Feb. 22, 2012, 3:08 PM), <http://medgadget.com/2012/02/brailletouch-touchscreen-typing-app-for-the-visually-impaired.html> (describing an app, which was developed by researchers at the Georgia Institute of Technology, “that allows folks to type on the touchscreen without seeing it at all”); Shaun K. Kane et al., *Slide Rule: making mobile touch screens accessible to blind people using multi-touch*

Moreover, although the CVAA specifically lists audio feedback for essential functions on certain digital apparatus as a topic to be addressed in the VPAAC's recommendations,¹⁷ the CVAA does not include tactile feedback in the list of topics to be covered by the VPAAC in its *Second Report*. Similarly, Sections 204 and 205 of the CVAA require audible feedback for some functions.¹⁸ However, those provisions do not identify tactile feedback as a requirement for

interaction techniques, in ASSETS '08 PROCEEDINGS OF THE 10TH INTERNATIONAL ACM SIGACCESS CONFERENCE ON COMPUTERS AND ACCESSIBILITY 73 (ACM 2008), *available at* <http://dl.acm.org/citation.cfm?id=1414487> (introducing "Slide Rule," a set of "audio-based multi-touch techniques that enable blind users to access touch screen applications"); CODEFACTORY, *Mobile Speak*, <http://www.codefactory.es/en/products.asp?id=316> (last visited June 4, 2012) (describing "Mobile Speak," a screen reader that can be installed on mobile phones) David Coldewey, *Smartphone app could help blind navigate indoors*, MSNBC.COM, <http://www.futureoftech.msnbc.msn.com/technology/futureoftech/smartphone-app-could-help-blind-navigate-indoors-780588> (last visited June 4, 2012) (describing a new system called "Navatar," which uses the sensors in a smartphone to detect progress along the map of a building, allowing for natural navigation that's cheap to boot"); AppAdvice LLC, *Apps for Blind And Visually Impaired*, <http://appadvice.com/applists/show/apps-for-the-visually-impaired> (last visited June 4, 2012) (listing apps for the visually impaired that may be downloaded on devices that use iOS, Apple's operating system for mobile devices); DISNEY RESEARCH, *Telsatouch*, http://www.disneyresearch.com/research/projects/hci_teslatouch_drp.htm (last visited June 4, 2012) (describing "a new technology for enhancing touch interfaces with tactile sensations"); MICROSOFT, *What Is Surface*, <http://www.microsoft.com/surface/en/us/whatissurface.aspx> (last visited June 4, 2012) (describing Microsoft's Surface[®] platform, which "sees and responds to touch and real world objects"); NUANCE, *Nuance TALKS&ZOOMS for Series 60 3rd/5th Edition and Symbian^3*, <http://www.nuance.com/for-individuals/by-solution/talks-zooms/index.htm> (last visited June 4, 2012) (describing a combined screen-reader and screen magnifier application); NUANCE, *Dragon Naturally Speaking*, <http://www.nuance.com/dragon/index.htm> (last visited June 4, 2012) (describing Nuance's Dragon speech recognition software); Donald Melanson, *Nokia shows off Haptikos tactile touch screen technology*, ENGADGET (Nov. 6, 2007, 11:39 AM), <http://www.engadget.com/2007/11/06/nokia-shows-off-haptikos-tactile-touch-screen-technology/> (describing a prototype of Nokia's tactile touch screen technology, Haptikos).

¹⁷ See CVAA § 201(e)(2)(G) (requiring the VPAAC to include in its second report, "[w]ith respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable on-screen text menus and other visual indicators used to access the functions on [certain digital apparatus] to be accompanied by audio output").

¹⁸ See *id.* § 204(a) (codified at 47 U.S.C. § 303(aa)(2)) ("[I]f on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus . . . such functions shall be accompanied by audio output . . ."); *id.* § 205(a) (codified at 47 U.S.C. § 303(bb)(1)) ("[The Commission may] require, if achievable . . . , that the on-screen text menus

apparatus functions. In fact, the CVAA does not even mention tactile feedback. Any requirement to provide tactile feedback would potentially chill innovation. The Commission should seek to avoid locking manufacturers into particular technologies, and consequently depriving the blind and visually impaired of the use of touch-screen and other innovative devices, by refraining from referencing tactile feedback in the forthcoming NPRM.

B. The Commission should clarify that the term “reasonably comparable” in Sections 204(a) and 205(a) of the CVAA does not mean “identical” with respect to physical buttons.

To resolve an open issue in the *User Interface Report*,¹⁹ the Commission should clarify that the term “reasonably comparable” in Sections 204(a) and 205(a) of the CVAA does not mean “identical” with respect to physical buttons, but rather should be given its usual meaning. That report proposes that “[w]hen dedicated physical buttons are used to control volume and/or channel selection, the controls for access to closed captions (or video description) must also be **reasonably comparable** to physical buttons, comparable in accessibility to those provided for control of volume or channel selection.”²⁰ Contrary to the position of certain VPAAC members, the Commission should not interpret “reasonably comparable” to mean “strict equivalence,” *i.e.*, if there are dedicated physical buttons for volume control and/or channel selection on a device, the controls for closed captions and/or video description must also be dedicated physical buttons, and those buttons must be “comparable in location to those provided for control of volume or channel selection.”²¹

and guides provided by navigation devices . . . for the display or selection of multichannel video programming are audibly accessible . . .”).

¹⁹ See *User Interface Report* at 20–21.

²⁰ See *id.* at 20 (emphasis added).

²¹ See *id.*

Instead, the Commission should interpret “reasonably comparable” according to its usual meaning, which does not require “strict equivalence.” This is consistent with the express language of the CVAA,²² which, to preserve industry’s ability to innovate, provides “maximum flexibility” to entities providing navigation devices to comply with the user control provisions of Section 205.²³ “Maximum flexibility” does not mean that user controls for access to closed captioning or video description must be *identical* to physical buttons.²⁴ Instead, “maximum flexibility,” as used in the CVAA, means that device manufacturers may comply with the user control provisions of Section 205 by employing a mechanism that provides a level of functionality substantially equivalent to the functionality provided by a button, key, or icon designated for accessing closed captioning or video description.²⁵

Similarly, Section 204 of the CVAA affords flexibility to entities providing digital apparatus to comply with the user control provisions of that section. Section 204(c) expressly permits entities to “meet the [user control] requirements [for digital apparatus] through alternate means than those prescribed [by the Commission]” so long as the user control provisions of the CVAA are met.²⁶ By expressly permitting entities to employ “alternate means” to meet the

²² See CVAA §§ 204(c), 205(a), (b)(5).

²³ See *id.* § 205(b)(5) (“Such regulations shall permit the entity providing the navigation device **maximum flexibility** in the selection of means for compliance with section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section).” (emphasis added)).

²⁴ See *User Interface Report* at 20–21.

²⁵ See H.R. REP. NO. 111-563, at 31 (2010) (“[Section 205(a) of the CVAA] also provides that when navigation devices include built-in closed captioning capability, access to such capability be available through a button, key, icon, **or any other mechanism that provides a substantially equivalent level of functionality.**” (emphasis added)).

²⁶ See CVAA § 204(c) (“An entity **may meet the requirements of section 303(aa)** of the Communications Act of 1934 **through alternate means** than those prescribed by regulations

accessibility requirements for user interfaces on digital apparatus, the CVAA precludes a reading of Section 204 that mandates “strict equivalence” with designated physical buttons, as advanced by consumer representatives serving on the VPAAC.

The CVAA further clarifies that access to captioning capability must be “reasonably comparable to a button, key or icon designated for activating” that feature.²⁷ Contrary to this plain language, as used in the CVAA, some VPAAC members argue in the *User Interface Report* that the “reasonably comparable” provision in Sections 204(a) and 205(a) “can be read to require that both the captioning function and the description function must each be . . . a button, a key, or an icon designated for the purpose.”²⁸ These VPAAC members ignore the plain language of the CVAA and the intent of Congress to provide industry with flexibility in complying with the CVAA’s requirements.²⁹ Therefore, the Commission should refrain from requiring user controls for access to closed captioning or video description to be identical to physical buttons and instead act in accord with Congress’s intent by permitting device manufacturers and service

pursuant to subsection (b) if the requirements of those sections are met, as determined by the Commission.” (emphasis added)).

²⁷ *Id.* § 205(a) (codified at 47 U.S.C. § 303(bb)(2)). Section 205(a) of the CVAA amends Section 303 of the Communications Act by adding new subsection (bb), which instructs the Commission to require, “for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.” *Id.*

²⁸ *User Interface Report* at 21.

²⁹ *See Bennett v. Islamic Republic of Iran*, 618 F.3d 19, 22 (D.C. Cir. 2010) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” (internal quotations and citations omitted)); *See also American Mining Congress v. EPA*, 824 F.2d 1177, 1183 (D.C. Cir. 1987) (“The first step in statutory interpretation is, of course, an analysis of the language itself. As the Supreme Court has often observed, the starting point in every case involving statutory construction is the language employed by Congress. In pursuit of Congress’ intent, we start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used.” (internal quotations and citations omitted)).

providers to employ mechanisms reasonably comparable to a button, key or icon for purposes of complying with Section 205(a).

C. The Commission should examine the Access Board’s new guidelines, when released, and harmonize user interface requirements where appropriate.

The *User Interface Report* encourages the Commission to harmonize requirements related to closed caption and video description controls with the new guidelines now being developed by the Access Board to ensure there are no conflicting requirements related to these functions.³⁰ CEA urges the Commission to consider carefully the delicate balance, not fully explored in the *User Interface Report*, between preserving flexibility and innovation in developing user interface controls while recognizing that there may be significant efficiencies if device and apparatus manufacturers only have to comply with one common set of user interface requirements.

D. The Commission should refrain from adopting any video description requirement(s) for video programming delivered via Internet protocol.

Although the *Video Description Report* mentions video description requirements for video programming delivered via IP,³¹ the Commission should not seek to adopt any such requirements. The Commission’s authority under the CVAA to adopt video description requirements for video programming is expressly limited to video programming “transmitted for display on television in digital format.”³² Although the CVAA authorized the Commission to reinstate the video description requirements that were vacated by the Court of Appeals for the D.C. Circuit in 2002, the CVAA expressly limited the reinstated video description rules to video

³⁰ See *User Interface Report* at 10.

³¹ See *Video Description Report* at 27-28.

³² See CVAA § 202(a) (codified at 47 U.S.C. § 613(f)(2)(A)).

programming “transmitted for display on television in digital format.”³³ With respect to video programming delivered via IP, Congress only required: (i) the VPAAC to provide recommended video description requirements for video programming “delivered using IP,”³⁴ and (ii) the Commission to report to Congress on the “technical and operational issues, costs, and benefits of providing video description for video programming that is delivered using IP.”³⁵ Neither statutory provision directs the Commission to implement video description requirements for video programming delivered via IP. In fact, Section 713(f)(4) of the Communications Act of 1934 bars the Commission from issuing additional regulations “unless the Commission determines . . . that the need and benefits of providing video description for video programming, *insofar as such programming is transmitted for display on television*, are greater than the technical and economic costs of providing such additional programming.”³⁶ Thus, the Commission lacks the requisite authority to apply video description requirements to video programming delivered via IP and should refrain from implementing any such regulations.

E. The Commission should defer action while industry develops a consensus end-to-end solution and transition plan regarding the transmission and reception of video described content.

An open issue remains in the *Video Description Report*, as it did not recommend timeframes for implementing a mechanism for the transmission and reception of video described content.³⁷ The Commission can best further the goals of the CVAA by deferring action while

³³ *Id.*

³⁴ *Id.* § 201(e)(2)(B), (C), (E).

³⁵ 47 U.S.C. § 613(f)(3).

³⁶ *Id.* § 613(f)(4) (emphasis added).

³⁷ See *Video Description Report* at 25–26.

industry develops a consensus end-to-end solution and transition plan. Industry is already hard at work; CEA continues to work with its members and, through its ANSI-accredited standards development process, to establish a method to unambiguously signal the presence of video described content to current and future digital television models. CEA has developed test material (*i.e.*, bit streams) to experiment with such a solution, but the industry has not completed analysis of this test material. The Commission should afford industry sufficient time to identify an appropriate end-to-end solution and establish a transition plan.³⁸

³⁸ *See id.* at 25 (noting that many of the issues identified with respect to improving access to video-described programming may be addressed through industry efforts, pursuant to the CVAA, to identify methods to enable audible access to user interfaces, program guides, and device menus that will enhance navigation to secondary audio services such as video description).

IV. CONCLUSION

In developing the forthcoming NPRMs in these proceedings, the Commission should follow CEA's foregoing recommendations.

Respectfully submitted,

CONSUMER ELECTRONICS
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